

The Camp: The role of the United Nations Regarding the Treatment of Migrants by the Libyan Regime

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Diplomats throughout the region and world commend each other; received recognition, awards, and promotions for conceiving the so-called Libyan Political Agreement (LPA). Despite the high praise, the 2015 agreement was repeatedly violated by its own drafters and by the members of the government that it created. What many fail to admit is that the last piece of diplomatic wrangling that has had any lasting meaning was United Nations (UN) Resolution 1970, which called for armed intervention against Qaddafi in 2011. In the seven years since, millions of dollars and thousands of man-hours dedicated to resolving the seemingly never-ending struggle have done little more than pad the resumes of diplomats and encourage NGOs to apply for more funding. More worryingly, the treatment of migrant trying to cross the Mediterranean and being held in detention camps for the sake of migration control is raising some serious questions on the role of the United Nations in facilitating human rights violations.

In an open letter by William Hennequin from Médecins Sans Frontières to Ghassan Salamé, Special Representative and Head of the UN Support Mission in Libya, writes in light of the situation of migrants detained in Libya that:

[T]hey had survived periods of detention in Libya lasting from a few months to several years. They had been held in official Ministry of Interior detention centers, where more than 5,000 refugees and migrants currently languish, and to whom international organizations such as ours have only limited access. (...) Others had been held in clandestine places run by people traffickers who use torture to extort as much money as they can from captives and their families. The scars seen by our medical teams on several patients on board the Nevin attest to the extreme levels of violence they had experienced. Their experiences in detention followed the succession of situations of danger; exploitation and abuse that punctuated these people's journeys. A dozen of them are registered as refugees with the UNHCR and some are children as young as 13. They are also the survivors of a sea crossing where the risk of dying has increased exponentially due to the plan – masterminded by Italy and other European countries and implemented in partnership with the Libyan coastguard – to return as many people as possible to Libya.

This raises the question: does the United Nations have any extraterritorial obligation and/or international legal responsibility regarding the situation of the migrants by the UN-supported regime in Libya? Using the Agambian lens, this article will investigate the externalization of migration control.

Introduction

The Arab Spring had grave consequences for the region in particular and for the world in general. The Libyan case, in particular had a heavy impact on its populace, the region and the

migrants who got caught up in the oil-rich country (Abdessok, 2017). More specifically, global migration and displacements drives migrating populations, especially from Africa, into worn-torn Libya up to the point of desperation resulting in self-immolation, highlighting the failure of the international community to act in a decisive manner. The 2011 uprising and armed conflict ended the 40-year rule of Gaddafi in Libya. Meanwhile, the end of this rule created conditions for illicit and criminal activities to flourish, in particular smuggling and trafficking of human beings. The dominant status of armed groups saw them positioned throughout the Libyan territory, borders and key installations (Democratic Reporting International, 2011-2019).

The newly erupted hostilities in 2014 and in 2019 Libya ushered in insecurity, bad governance and humanitarian crisis: ongoing violence led to a fragmentation of national institutions and disintegration of the rule of law (OCHA, 2019). Despite the fact that the Government of National Accord (GNA) began its operations in Tripoli in April 2016, it was, so far, difficult to regain control over the entire territory in face of the powerful armed groups and the prevalent criminal infrastructure including those systematically abusing migrants and refugees (Taoldo 2015, 2-3). The unfolding chaos in the country is underscored by the fact that the country's justice system is impeded, paralysed, unable to address the grave human rights violations and abuses committed by State and non-State actors. Against this background, the breakdown of the economy and devaluation of the currency has contributed to increasing numbers of migrants and refugees. To this end, Sally Hayden holds:

Tens of thousands of refugees and migrants have been locked up indefinitely in Libyan detention centers over the past two and a half years, after they were intercepted by the Libyan coast guard trying to reach Italy across the Mediterranean Sea. Since 2017, the Libyan coast guard has been supported with equipment and training worth tens of millions of dollars by the European Union. This money comes from the Trust Fund for Africa—a multibillion-dollar fund created at the height of the so-called migration crisis, with the aim of preventing migration to Europe by increasing border controls and funding projects in 26 African countries (Hayden, 2019).

The country is an international legal grey zone, where migrant rights are not guaranteed, while the United Nations' support for the current interim government begs the question of complicity and responsibility for actions of other actors attributable to the United Nations. Peter Tinti held that

Migrants have become a commodity to be captured, sold, traded, and leveraged. Regardless of their immigration status, they are hunted down by militias loyal to Libya's U.N.-backed government, caged in overcrowded prisons, and sold on open markets that human rights advocates have likened to slave auctions. (Tinti, 2017)

To this end, this article will first, offer a background to the Libyan intervention in 2011 and discuss the impact of the intervention on the Libyan political infrastructure. Second, the article will analyse the peace management and securitisation of space by international actors, in particular the United Nations in Libya. Third, the article will discuss and identify the issues surrounding the detention camps in Libya, and analyse them using the Agambian approach. Fourth, the article will examine the United Nations' responsibility for the current migrant crisis in Libya and, fifth, will provide its conclusions.

The samaritans are coming: civil war in Libya and its consequences

Civil unrest and war

The Libyan uprising in 2011 was different from those witnessed in other countries of the Arab Spring. The revenues from oil and gas were largely benefitted its populace. As one academic writes, the oil and gas industry was able to absorb most of the skilled personnel in the country and allowed the population to benefit from the profits. The ecosystem of security, intelligence and control, ensured loyalty built over the years through alliances, nepotism and money. This enabled president Muammar Gaddafi to maintain power for decades (Peddle 2017, 94). Under his rule, the relative wealth and international pariah status of the country saw few people leaving the country. However, the situation changed with considerable effect after 2011 (Taoldo 2015, 12). Protests erupted in 2011 across three Libyan cities: Benghazi, Bani Walid and Darnah. In particular, people demonstrated in light of the continued delays of construction of government housing, the lack of basic services and widespread political corruption. The demonstrations morphed into anti-government demonstrations as citizens were inspired by the happenings in Egypt and Tunisia. However, the protests were met with massive clampdowns and repressions by police and security forces, to which opposition leaders retaliated by declaring a "Day of Rage" on 17 February 2011. The violent response by the Libyan government employed against the protesters sparked international condemnation and resulted in a United Nations Security Council Resolution, effectively freezing assets, imposing arms embargoes and impeding the Gaddafi regime members to leave the country (United Nations, 2011).

Responsibility to Protect doctrine and the United Nations Security Council

Armed rebels took control of Benghazi on the 20th of February 2011, while the news spread of an imminent bloodbath against civilians and protestors (Reuters, 2020). In a short span of time, the United Nations unanimously passed United Nations Security Council Resolution 1970 and imposed an arms embargo, travel ban, asset freeze and referred the situation to the Prosecutor of the International Criminal Court. Consequently, the Prosecutor issued warrants to arrest Gaddafi and his close aides (ICC, 2011). Following this, on 17 March 2011, the United Nations Security Council Resolution 1973 was passed, authorising a Chapter VII mission through the establishment of a no-fly zone in order to protect civilians, by all means necessary. Within days, the NATO was enforcing Resolution 1973 with an aerial bombing campaign. The Resolution stated:

Reiterating the responsibility of the Libyan authorities to protect the Libyan population and reaffirming that parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of civilians [...]

Considering that the widespread and systematic attacks currently taking place in Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity [...]

3. Demands that the Libyan authorities comply with their obligations under international law. [...]

4. Authorizes Member States that have notified the Secretary General [...] to take all necessary measures [...] to protect civilians and civilian populated areas under threat of attacks in Libyan Arab Jamahiriya [...] while excluding a foreign occupation force of any form on any part of Libyan territory. [...]

6. Decides to establish a ban on all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians. [...]

8. Authorizes Member States that have notified the Secretary General [...] to take all necessary measures to enforce compliance with the ban on flights imposed. (United Nations 2011a)

The Responsibility to Protect doctrine was, on first sight, the moral response of the international community which was still shaken up by the events in Srebrenica and Rwanda. The doctrine aimed to provide a legal framework for human protection during armed interventions to prevent the atrocities which were seen in the past (Cantini, Zavalov 2018, 76). Similarly, the doctrine stressed, in an unprecedented way, the responsibility for United Nations' lack of action in light of mass human rights violations. However, this proved to be a rather controversial material to work with, and its sole 'hard' employment, involving a third-pillar intervention against the will and interests of the government of Libya in 2011, confirmed the presence of major conundrums when operating with external military intervention policies. The military intervention toppled the regime of Muammar Gaddafi and had not envisaged a plan for peace management per se. Even though officially based upon the concept of "protection", the Western narrative was the one of "good" against the "evil". After the fall of Tripoli and the death of Gaddafi, Alain Juppé, then French Foreign Minister, declared that the operations had avoided thousands and thousands of additional victims.

Military intervention 2011

A crisis of a protracted nature ensued, if not civil war. The official narrative and International course of action moved to remove Gaddafi from power, as the no-fly zone caused significant damage to the Libyan Air Force. Yet French and British strikes went beyond, namely up to shelling Gaddafi's palaces (Domestic-Met 2011, 876). The military intervention that followed had consequences on the country that are still felt today.

Mehdi Hasan, Senior Editor of The New Statesman, summarised the situation as follows: Dead civilians are dead civilians, whether Libyan or Ivorian. To intervene militarily in one (oil-rich) African country on humanitarian grounds, while ignoring the killings and violence in another (not yet oil-rich) African country raises troubling questions about the motives and intentions of the so-called liberal interventionists. (Hassan, 2020)

Interestingly, a research commissioned by the French Senate held the following: Comme souvent, l'inévitable ambiguïté de la résolution du Conseil de sécurité a permis des interprétations différentes, au fur et à mesure que, sur le terrain, l'enchaînement difficilement maîtrisable des interventions conduisait à approfondir les engagements. Pour certains, il s'agissait simplement d'obtenir un cessez-le-feu pour encourager les parties à discuter ; pour d'autres, cela pouvait aller jusqu'au renversement du régime et de Kadhafi, lequel a constamment refusé de négocier. [...] Ensuite, nombre d'observateurs ont considéré que le suivi après l'intervention n'avait pas été correctement assuré par manque de consensus – y compris au niveau européen – sur les objectifs stratégiques de cette opération, mais surtout, un réel déficit de pilotage politique. Selon certains observateurs, les effets potentiellement destructurant de l'intervention militaire ont été sous-estimés. Sur le plan militaire, l'opération a été un succès, mais elle a installé durablement un vide politique et

sécuritaire nuisible à la stabilité de la région et aux intérêts de sécurité européens. D'un État voyou, la Libye est devenue un État failli. (Sénat, 2011)

To this end, Anthony Anghie points out that the international law of security under the auspices of the United Nations exploits the distinctions and techniques of law. By doing so, he continues, the new international law elaborates on the uncertainties and ambivalences in light of threatening situations such as interventions in other countries. Mandates of the United Nations sanitise the intervention and international mandates are seen as sacrosanct, beyond any doubt (Anghie 2005, 303).

United Nations peace management in Libya

The end of the war witnessed the establishment of the United Nations Support Mission for Libya (UNSMIL). This integrated special political mission was established on the 16th of September 2011 by United Nations Security Council Resolution 2009 (2011) and at the request of the Libyan transitional authorities to support them in their post-conflict efforts (United Nations, 2011). Between 2011 to 2014, the fractured National Transitional Council and its successors tried to interact and use different political actors of the region to maintain international support for the governmental authority. (New America, 2011).

UNSMIL's mandate was modified and extended by the Security Council in resolutions 2022 (2011), 2040 (2012), 2095 (2013), 2144 (2014), 2238 (2015), 2323 (2016) and 2376 (2017). Its current mandate is stipulated by UN Security Council Resolution 2434 (2018), which extended UNSMIL's mission until 15 September 2019. However, while the United Nations has been at the very forefront at peace mediation efforts, the main consideration and focus was to unify Libya by replacing parliaments and associated governments, while outlining one political vision (Watanbe 2019, 1). Against this background, in the eastern part of the country, the Libyan Arab Armed Forces (LAAF) emerged under the leadership of General Al-Haftar - after severe violent campaigns in Benghazi and Derna - as the dominant political, security and economic actor in the East. In the western part of the country, four major armed groups were able to retain control over Tripoli, while co-existing with the Government of National Accord (GNA), while they were gaining influence and building their territory from state resources (Chatham House, 2014).

The civil war broke out in mid-2014; its seeds, however were sown much earlier with the Western intervention in 2011, which caused the first severe hostilities, leading to the emergence of multiple power centers and a plethora of militias in the country. During the early transitional phase, no serious efforts were made to demobilise militias. The UN, however, appeared to have made a major breakthrough in December 2015, when it brokered a power-sharing agreement – the Libyan Political Agreement (LPA, 2015). Yet, the agreement encountered problems and a new conflict emerged. Whereas the fault line dividing Libya had been between rivaling LAAF and GNA prior to the signing of the deal, 'the dividing line following its conclusion has been between the UN-backed unity government and its political and military allies, on the one hand, and Haftar and his political supporters, on the other. (Watanbe, 2019). The LAAF, supported by Egypt, Russia and United Arab Emirates, pushed since 2015 for gaining control over all of Libya (Al Jazeera, 2020), while the situation remained highly tense in the country as in April 2019, as renewed hostilities broke out, when eventually the Turkish forces entered the battle supporting the GNA and locating the fights in Sirte. At the time of writing this article, through diligent and nimble diplomatic negotiations a group of countries spearheaded by Germany, peace talks are taking place between the warring

parties (United Nations 2020). In the end, the United Nations has not authorised chaos in the country, but has also enabled a government to commit large-scale human rights violations.

Migration detention camps

EU - Libya migration deal and the role of the United Nations

The European Union (EU) and Libya announced a migration deal to curb the flow of migrants from Libya (European Commission, 2017). The plan envisioned that the European Union would support so-called 'safe' refugee camps within Libya as well as voluntary repatriation of refugees who are willing to return to their countries of origin (Friedrich Ebert Stiftung, 2019). According to the International Migration Organisation's Displacement Tracking Matrix, the dominating nationalities are from Niger (136,000), Chad (103,000), Egypt (100,000), Sudan (77,000), and Nigeria (50,000) (Migration Policy Institute, 2020). Among other things, the deal will boost training and equipment to Libya's struggling coastguard and see more engagement of Libyan authorities involved with neighbouring nations including Algeria, Tunisia and Egypt to contain flows of migrants (Deutsche Welle 2019). The current policies, however, are solely 'externalizing border control and supporting tyrannical regimes that block people from leaving their country, regardless of the deteriorating human rights conditions therein.' (Friedrich Ebert Stiftung, 2019). Processing of the migrants was to be carried out by the United Nations High Commissioner for Refugees (UNHCR) and International Organization for Migration (IOM) officials funded by the EU. It was envisioned that those that qualify for asylum will be afforded passage to Europe while those who do not will be resettled in Libya or repatriated to their countries of origin (Asiedu, 2017).

Libya has not recovered from the civil war - more specifically, Libya is a country which is still getting a grasp of its instability and insecurity for the civilian population and migrants in particular (Bonnici Bennett, 2018, 5). The deal was far from being helpful. As it was revealed by the Associated Press:

When the European Union started funneling millions of euros into Libya to slow the tide of migrants crossing the Mediterranean, the money came with EU promises to improve detention centers notorious for abuse and fight human trafficking. That hasn't happened. Instead, the misery of migrants in Libya has spawned a thriving and highly lucrative web of businesses funded in part by the EU and enabled by the United Nations, an Associated Press investigation has found. The EU has sent more than 327.9 million euros to Libya, with an additional 41 million approved in early December, largely channeled through U.N. agencies. The AP found that in a country without a functioning government, huge sums of European money have been diverted to intertwined networks of militiamen, traffickers and coast guard members who exploit migrants. In some cases, U.N. officials knew militia networks were getting the money, according to internal emails. (Associated Press 2020).

As two Hintjens and Bilgic extrapolate, a so-called 'proxy war' is currently being carried out on the issues of refugees and migrants making their way to the EU. The proxies, to this end, are vital transit countries such as Libya, Morocco, Turkey (and other EU partners). (Hintjens and Bilgic, 2019, 88-89). This proxy war is motivated by two elements. First, deterrence and second, containment. These two elements are being 'militarized and spatially colonial principles since specific categories of human beings are excluded from protection and are confined forcibly to certain spaces considered ...situable' for them.' Echoing this concern, Oxfam and other non-governmental organisations ascertained in an open letter that:

The Mediterranean has become one of the deadliest seas in the world. In January, a naval helicopter rescued three people, who reported that their ship had left Libya with 120 women, children and men on board. Everyone else had drowned. People who are forcibly returned to Libya are likely to be placed in arbitrary detention, abused, tortured or sold into slavery. According to the UN refugee agency, over 15,000 people were returned to Libya in 2018. Under international law, people rescued at sea should be taken to the nearest place of safety where they will be treated with respect and offered protection. Europe has committed to save lives in the Mediterranean and share responsibility in hosting refugees. The rights to seek asylum and the principle of non-refoulement are repeated in the Treaties of the European Union, which also declares that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These are the values we all believe in and the law we are bound by. They should be upheld regardless of political disagreements. (Oxfam, 2019)

The UNHCR and IOM officials are entrusted to handle and process migrant issues, but the striking fact is that they cannot, alone because of the migrants numbers which are too large for them to handle. Carnegie Endowment for International Peace goes as far as to call the preceding developments leading to the migrant crisis as a moral failure (Carnegie, 2018). The intervention was a flawed one, while it used the human rights narrative as a vehicle to expand Western hegemony (Shupak, 2015). In the end, the UN allowed itself to become an aid to provide the groundwork for Western hegemonic interests and manipulate its own Resolution 1973 into a regime change (Brockmeier et al. 2016, 131). In this context, the European Union aims to fill the void with deals and agreements to save a world order which serves interests of the Western world: the spatial movement and location of the migration problem in Libya with the subsequent externalisation of the EU migration control serves one goal. Namely, to abscond itself of human rights duties and an orchestration which 'involves orchestrators enlisting third parties as intermediaries on a voluntary basis, providing them with ideational and material support in pursuit of a certain governance goal.' (Müller and Slominski 2020, 1).

However, the EU-Libya fails to acknowledge the deplorable migrant conditions in Libya camps: essentially, migrants who shall be returned to Libya are likely to end up in detention centers. One overarching concern is Libya's negative track record on human rights; the country has failed to ratify international conventions on human rights. UNICEF's "A Deadly Journey Report" released recently captures gross violations of human rights in Libya as one of the central push factors for migration to Europe. Migrants who make it to Italy have often recounted being abused, starved and even raped in detention camps. All these issues notwithstanding, the EU has only met 5 percent of target for relocating refugees from Greece and Italy. Human Rights Watch, to this end, held that the European Union policies have actively contributed to the current situation in Libya (Human Rights Watch, 2019).

Detention camps - an Agambian perspective

The detention camps set up by the UN-backed government are having devastating consequences on the livelihood of the migrants in Libya. Can the omission of the United Nations to intervene in human rights in Libya give rise to international legal responsibility? (Klabbers 2017, 1133). Before discussing this legal dimension, the article will elucidate the Agambian perspective on the refugee situation in Libya. Giorgio Agamben's work inspired many academics to theorise the refugee camp as an area and space of suspension of power, but

the imposition of pure violence where political community is not existent (Edkins, Fat et al., 2005). Agamben argues that refugees are regarded as the ultimate biopolitical subjects, those who are regulated and governed in a permanent state of exception (Agamben, 1998). To this end, refugees are reduced to 'bare life': humans as animals in nature without political freedom. As he explains:

The fundamental categorical pair of Western politics is not that of friend/enemy but that of bare life/political existence, *zoē/bios*, exclusion/inclusion. There is politics because man is the living being who, in language, separates and opposes himself to his own bare life and, at the same time maintains himself in relation to that bare life in an inclusive exclusion. (Agamben 1998, 8)

Agamben argues that in the paradigm of bare life is the homo sacer, an archaic Roman law figure, who is included in the juridical order "solely in the form of his exclusion" (Agamben 1998, 112). The homo sacer is banned and is free to be killed by anyone. To this end, the homo sacer was not part of the polis as political life - but solely biological life. It is here when emergency measures became part and parcel of normality, an effective and celebrated tool of the sovereign. The camp was outside the normal juridical order, but still included. This is why, Agamben says, Hannah Arendt could affirm that in the camp "everything is possible" (Agamben 1998, 170). The refugee camp is, in the ideal case, a space of temporary nature where refugees shall receive humanitarian assistance until the a durable future case be offered to them. They are in particular shelter:

Shelter is a critical determinant for survival in the initial stages of a disaster. Beyond survival, shelter is necessary to provide security, personal safety and protection from the climate and to promote resistance to ill health and disease. It is also important for human dignity, to sustain family and community life and to enable affected populations to recover from the impact of disaster. (Sphere Handbook)

These camps are sometimes spaces of hospitality, often a space of exception, but in the case of Libya a place of insecurity and violence (Loescher and Milner 2005, 23-34). Invoking the work of Agamben, the Libyan refugee camps - where all power is by its nature biopower - is constituted by its ability to suspend itself in a state of exception and determine who lives and who dies. To this end, Daria Davitti explains that the concepts of 'the ban and of the state of exception are of course closely interlinked, and both are useful to understand the way in which emergency, juridical exclusion/inclusion and violence materialize themselves in various contemporary contexts, including within the infrastructures of the EU's liquid borders.' (Davitti 2019, 1183). Agamben's argument is that the omnipotent rule over human beings - who are lacking protection - leads to the abandonment of human beings from the law. This, in fact, is 'tantamount to including the very concept of abandonment within the law' (Zavelaya 2017, 41-60). Michael Peters encapsulates poignantly that:

If anything the refugee camp is the creation and symbol of the age of failed western globalization policies that point to free trade and liberal international global politics on the one hand and yet on the other involve 'globalization as war' and ongoing conflicts over oil, oil pipeline, and strategic territories. (Peters 2018, 1166)

The EU and also the UN, have allowed a systemic negligence towards refugees to prosper, with a constitutive biopolitical strategy of the measures in Libya (Peters 2018, 182). It is Agamben who ascertains that (certain) Western politics are morally bankrupt, such as sovereignty, citizenship, the rule of law and human rights) (Whyte 2013, 6). Libya, in fact, is the spatial order where the migrant is homo sacer, suspended in the socio-legal conundrum.

The EU, assisted by the UN, has 'outsourced, and externalized beyond its traditional violent borders it is all the more important to also look inside EU sovereign space to examine stealthier forms of structural violence that are hidden in plain view. More often than not this internal brutality is concealed behind a veil of inaction, and the withholding of the means of life.' (Davies, Isakjee, Dhesi 2017, 1281).

International legal responsibility of the United Nations for the migrant crisis in Libya

It is true that, in the traditional sense, 'international organisations have been viewed as guardians of international law.' (Daugirdas 2014, 991). In one of its first Advisory Opinions the International Court of Justice held that the United Nations is an international organisation vested with implied powers and the specific will of its members to create an organisation with its own powers and own capacity. To this end, it had stated in its Advisory Opinion:

De l'avis de la Cour, l'organisation était destinée à exercer des fonctions et à jouir de droits - et elle l'a fait - qui ne peuvent s'expliquer que si l'Organisation possède une large mesure de personnalité internationale et la capacité d'agir sur le plan internationale. Elle est actuellement le type le plus élevé d'organisation internationale, et elle ne pourrait répondre aux intentions de ses fondateurs si elle était dépourvue de la personnalité internationale. On doit admettre que ses Membres, en lui assignant certaines fonctions, avec les devoirs titres responsabilités qui les accompagnent, l'ont revêtu de la compétence nécessaire pour lui permettre de s'acquitter effectivement de ces fonctions. (ICJ, 1947)

It was in 2011 that the International Law Commission (ILC) adopted a set of draft articles on the responsibility of international organisations (DARIO). The ILC articles attempt to clarify both: the obligations and the breach of those obligations (DARIO). The Articles, 'identify when conduct is attributable to an IO rather than a state or private individual. They address the circumstances under which violations might be excused. And they specify the consequences of responsibility.' (Daugirdas 2014, 992). Article 7 of the Draft Articles for the Responsibility of International Organisation stipulates:

Conduct of organs of a State or organs or agents of an international organization placed at the disposal of another international organization. (DARIO)

A comparative study can be the mission of the United Nations in East Timor. The United Nations Security Council Resolution 1272 stipulates:

Welcomes the intention of the Secretary-General to appoint a Special Representative who, as the Transitional Administrator, will be responsible for all aspects of the United Nations work in East Timor and will have the power to enact new laws and regulations and to amend, suspend or repeal existing ones (United Nations Security Council, 1999)

The Resolution, very clearly, weds responsibility with de-facto governance of the territory. As Markus Benzing writes,

However, if an international organisation actually exercises functions which would normally be performed by a state, and which directly affect individuals, the question of its human rights obligations seems obvious. In fact, the United Nations has emulated "state behaviour" in East Timor not only nominally, but also practically, hence (maybe understandably) making the same mistakes. (Benzing 2005, 324)

From international legal personality flows international legal responsibility. Alvarez points out, that if there is no political will for that outcome, international organisations, like

the UN, will likely attempt to evade most of the ILC's draft rules by relying heavily on the proposition that the *lex specialis* rules recognised in Draft Articles 63–66 apply in preference to the (alleged) *lex generalis* (Klabbers 2017, 1133-1161). Jan Klabbers points to a concept termed as 'role responsibility'. He writes:

The underlying idea is that some obligation flows directly from the function that has been delegated to the international organisation (its mandate), without the need to identify a separate legal obligation contained in some primary obligation or other. (Klabbers 2017, 1135).

The argument here will be that the United Nations must be held accountable and responsible if it has failed to honour its international mandate. In particular, the author draws on the interplay between articles 1, 24 and 99. To this end, attention is brought to the Preamble of the United Nations Charter which stresses:

- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom (UN Charter).

The United Nations has enabled a war and caused regime change by overreach of its own United Nations Security Council Resolution through one of its main organs, the United Nations Security Council. The intervention under Chapter VII triggered chaos and turmoil in Libya. Moreover, the support for a government which is consistently suspending migrants' rights is giving rise to the violation of the United Nations Charter and, to this end, violates core responsibilities of the United Nations. The United Nations, as caretaker for the Libyan government and as such guarantor for peace and security in the region has role responsibility. Klabbers point out that:

What matters with respect to international organizations, then, absent direct obligations to act, is whether a duty to act can and must be derived by other means – whether a 'negative instrumentality' can be derived from elsewhere. Tony Honoré suggests that, in general and in the abstract, obligations to act can stem from a number of different sources (in addition to specific rules). They can stem from engaging in risky activities; from being well placed to meet a need; from receiving a benefit; from making a promise and from occupying a specific office or social role – the latter is sometimes referred to as 'role responsibility'. (Klabbers 2017, 1154)

In the end, it is about a transnational discourse which protects the reputation of an international organisation, such as the United Nations, for compliance with international law. The reputation of such an organisation is very much driven by its legitimacy. The violations of its role responsibility, this author argues, will undermine and suspend its legitimacy. It is a core value of the United Nations to comply with international law - the creation of an imperial socio-legal ecosphere through the Resolution 1973, however, was the overreach. The invocation of human rights is not a means to an end, but an end in itself. The United Nations Security Council has, with Resolution 1973, used human rights in an extent to reimagine its hierarchy and domination. As Golder writes, a certain 'investment in making human rights mean something different takes place at the imaginative cost of creating new forms and new

political vehicles and affiliations for the realisation of that universality, or justice or freedom however conceived.' (Golder 2014, 114).

Conclusion

The Libyan example has set a dangerous precedent. Without a framework to hold intervening powers accountable for breaching international law, the author argues that the Libyan experience will provide the framework for future imperial interventions. This type of big power politics does not contribute to peace. The intervention and the civil war exacerbated social divides in Libya, leading to the impoverishment of vast swathes of the population, extreme human rights abuses, and an unprecedented displacement crisis (Pradalla and Taghdisi 2017, 2411-2427). In consequence,

The principle of the responsibility to protect engenders and reproduces international hierarchy through its normative diminution of sovereignty. When principles are viewed as forms of action rather than formulas to be applied, the relationship between the theory and practice of the responsibility to protect appears as one of cascading entailments. On this view, the responsibility to protect engenders forms of authority that diminish the normative significance of state sovereignty while empowering institutions such as the Security Council. These institutional transformations reinforce a hierarchical international order, which in turn creates the conditions for specific practices. These institutional and practical entailments cannot be fully contained by procedural checks and interpretive choices. (Getachew 2019, 260)

The violations of the arms embargo and the no-fly zone only predicated that the Resolution 1973 provided the groundwork for the legalised imperial intrusion. Moreover, the backing of the Libyan government has contributed to the omission of the international community's oversight of migrant detention camps. To this end, the notion of 'omission' in the Draft Articles needs to be linked to the mandate of the United Nations. The failure to act in the case of Libya is a violation founded upon legalised imperialism, a biosphere that has contributed to the suspension of migrant rights. The United Nations has not only failed to retain and execute its mandate under Chapter VII, but it has also failed to painted human rights of migrants in a status of exception, created by own default.

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